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JAMES N. HATZEN, Clerk
By:  FOR THE NORTHERN DISTRICT OF GEORGIA
Deputy Clerk
IN THE UNITED STATES DISTRICT COURT
ATLANTA DIVISION

UNITED STATES OF AMERICA,)
MISSISSIPPI COMMISSION ON)
ENVIRONMENTAL QUALITY)
)
Plaintiffs,)
)
)
v.)
)
GEORGIA GULF CHEMICALS AND)
VINYL, LLC)
)
Defendant.)
_____)

Civil Action No.

1:07-CV-3113

CONSENT DECREE

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WHEREAS, Plaintiffs, the United States of America (“the United States”), on behalf of the United States Environmental Protection Agency (“EPA”), and the Mississippi Commission on Environmental Quality (“MCEQ”), on behalf of the State of Mississippi (“Mississippi” or the “State”), and the Mississippi Department of Environmental Quality (“MDEQ”) (together the “Plaintiffs”), have filed a Complaint alleging that Georgia Gulf Chemicals and Vinyls, LLC (“Georgia Gulf” or “Defendant”), has violated the following environmental statutes and their implementing regulations at its Aberdeen, Mississippi polyvinyl chloride manufacturing facility (the “Facility” or the “Aberdeen Facility”): the Clean Air Act (“CAA”), 42 U.S.C. § 7401 *et seq.*; the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6901 *et seq.*; the Emergency Planning and Community Right-to-Know Act (“EPCRA”), 42 U.S.C. § 11001 *et seq.*; the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (“CERCLA”), as amended, 42 U.S.C. § 9601 *et seq.*; and the Clean Water Act (“CWA”), 33 U.S.C. § 1251 *et seq.*, as amended by the Oil Pollution Act of 1990 and analogous State counterparts including the Mississippi Air and Water Pollution Control Law, Miss. Code Ann. § 49-17-1 *et seq.*, and the Solid Wastes Disposal Law of 1974, Miss. Code Ann. § 17-17-1 *et seq.* (Rev. 2003);

WHEREAS, by agreeing to entry of this Consent Decree, Georgia Gulf makes no admission of law or fact with respect to any of the allegations set forth in the Consent Decree or the Complaint filed herewith and denies any violation of any law or regulation identified herein;

WHEREAS, the purpose of this Consent Decree is to ensure compliance with applicable environmental laws and regulations and resolve alleged violations at the Aberdeen Facility;

WHEREAS, EPA and MCEQ conducted a multi-media inspection of the Aberdeen Facility in August 2004 (the "Inspection");

WHEREAS, Georgia Gulf has waived all applicable federal or state requirements of statutory notice of the alleged violations;

WHEREAS, the Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and will avoid litigation among the Parties and that this Consent Decree is fair, reasonable, and in the public interest;

NOW, THEREFORE, before the taking of any testimony, without the adjudication or admission of any issue of fact or law except as provided in Section I, below, and with the consent of the Parties,

IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as

follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action and over the Parties, pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928; Section 113(b) of the CAA, 42 U.S.C. § 7413(b); Section 325(c)(4) of EPCRA, 42 U.S.C. § 11045(c)(4); Section 309(b) and (d) of the CWA, 33 U.S.C. § 1319(b) and (d); Sections 103 and 113 of CERCLA, 42 U.S.C. §§ 9603(a) and 9613(b); and 28 U.S.C. §§ 1331, 1345, and 1355. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1331, 1345, 1355, 1395(a), and 1391(b) and (c), 42 U.S.C. § 7413(b) and (c), 42 U.S.C. § 6928(a) and (g), 33 U.S.C. §§ 1319(b) and 1321(b), 42 U.S.C. §§ 9609(c) and 9613(b), and 42 U.S.C. § 11045(c)(3), because Georgia Gulf has its corporate headquarters, in Atlanta, Georgia, which is in this judicial district. For purposes of this Decree, or any action to enforce this Decree, EPA, MCEQ, and Georgia Gulf consent to the Court's jurisdiction over this Decree or such action and over Georgia Gulf and consent to venue in this judicial district. This Court has supplemental jurisdiction under 28 U.S.C. § 1367 over the State law claims asserted by MCEQ pursuant to the Mississippi Air and

Water Pollution Control Law, Miss. Code Ann. § 49-17-1 *et seq.* and the Solid Wastes Disposal Law of 1974, § 17-17-1 *et seq.* (Rev. 2003).

2. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b); Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2); and Section 309(b) of the CWA, 33 U.S.C. § 1319(b), notice of the commencement of this action has been given to MCEQ.

II. APPLICABILITY

3. The obligations of this Consent Decree apply to and are binding upon the United States, MCEQ, and upon Georgia Gulf and any of its successors, assigns, or other entities or persons otherwise bound by law.

4. No transfer of ownership or operation of the Facility, whether in compliance with the procedures of this Paragraph or otherwise, shall relieve Georgia Gulf of its obligation to ensure that the terms of the Decree are implemented. Before such transfer, if possible, but no later than the closing date of such sale or transfer, Georgia Gulf shall provide a copy of this Consent Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with a copy of the proposed written agreement, to EPA Region 4, EPA Headquarters, MCEQ, and the United States Department of Justice, in accordance with Section XIV of this Decree (Notices). Any transfer of

ownership or operation of the Facility without complying with this Paragraph constitutes a violation of this Decree.

5. Georgia Gulf shall provide a copy of this Consent Decree to all officers, employees, and agents whose duties might reasonably include compliance with any provision of this Decree, as well as to any contractor retained to perform work required under this Consent Decree. Georgia Gulf shall condition any such contract upon performance of the work in conformity with the applicable terms of this Consent Decree.

6. In any action to enforce this Consent Decree, Georgia Gulf shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree, unless such failure constitutes a Force Majeure event within the meaning of Section IX (Force Majeure).

7. In the event that Georgia Gulf or the transferee identified in accordance with Paragraph 4 above determines that it will permanently cease vinyl chloride operations at the Facility while this Consent Decree is in effect, Georgia Gulf shall notify EPA Region 4, EPA Headquarters, MCEQ, and the United States Department of Justice, in accordance with Section XIV (Notices) in writing at least sixty (60) days prior to ceasing such operations. The notification shall not

take the place of Georgia Gulf's or the transferee's responsibility of notifying MCEQ or EPA of the closure of the operations that may be required by any permit or federal or State law. Georgia Gulf will be relieved of its obligation to continue the performance of the requirements set forth in Paragraphs 23 (Above-Ground PVC Solids Removal Unit) through and including Paragraph 29 (Post Construction Sampling Results) of Section V (Compliance Requirements) of this Consent Decree as of the date the vinyl chloride operations by Georgia Gulf or the transferee are permanently ceased at the Facility. However, Georgia Gulf shall be required to pay the civil penalty set forth in Section IV (Civil Penalty), and complete the requirements set forth in all other Paragraphs of this Consent Decree. Furthermore, Georgia Gulf shall complete the requirements set forth in Paragraph 30 (Removal of PVC Solids from Ponds 1 and 3) of Section V (Compliance Requirements), within sixty (60) days of the date on which Georgia Gulf or the transferee cease vinyl chloride operations. Georgia Gulf's performance of the requirements under this Consent Decree does not relieve Georgia Gulf or the transferee from the requirement to comply with any federal or State laws or regulations applicable upon the cessation of vinyl chloride operations at the Facility.

8. In the event that Georgia Gulf or the transferee restart vinyl chloride operations at the Aberdeen Facility, Georgia Gulf shall not be relieved of its obligations under Paragraph 23 (Above-Ground Solids Removal Unit) through and including Paragraph 29 (Post Construction Sampling Results) of Section V of this Consent Decree (Compliance Requirements), and shall, within sixty (60) days of recommencing such operations, come into compliance with the terms of this Consent Decree, or be subject to stipulated penalties as set forth in Section VIII (Stipulated Penalties).

III. DEFINITIONS

9. Except as otherwise provided in this Consent Decree, definitions for the terms presented herein shall be incorporated from the following statutes and their corresponding regulations: ,CAA, 42 U.S.C. § 7401 *et seq.*; RCRA, as amended, 42 U.S.C. § 6901 *et seq.*; EPCRA, 42 U.S.C. § 11001 *et seq.*; CERCLA, as amended, 42 U.S.C. § 9601 *et seq.*; the CWA, 33 U.S.C. § 1251 *et seq.*, as amended by the Oil Pollution Act of 1990; the Mississippi Air and Water Pollution Control Law, Miss. Code Ann. § 49-17-1 *et seq.*; and the Solid Wastes Disposal Law of 1974, § 17-17-1 *et seq.* (Rev. 2003).

Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

- a. The “Aberdeen Facility” or “Facility” shall mean Georgia Gulf’s manufacturing facility located at 715 Highway 25 South, Aberdeen, Monroe County, Mississippi, 39730;
- b. “Complaint” shall mean the complaint filed by the United States and MCEQ in this action;
- c. “Consent Decree” or “Decree” shall mean this Decree and all appendices attached hereto (listed in Section XXIII). In the event of any conflict between this Decree and any appendix hereto, this Decree shall control;
- d. “Day” shall mean a calendar day unless expressly stated to be a working day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal or state holiday, the period shall run until the close of business of the next working day;
- e. “Defendant” or “Georgia Gulf” shall mean Georgia Gulf Chemicals and Vinyls, LLC;
- f. “Effective Date” shall be the date of entry of this Consent Decree by the Court;
- g. “EPA” shall mean the United States Environmental Protection Agency and any of its successor departments or agencies;

h. “Hazardous Waste” shall mean waste that is hazardous within the meaning of RCRA, 42 U.S.C. § 6903, and its implementing regulations;

i. “LDAR” shall mean the Leak Detection and Repair requirements set forth in 40 C.F.R. Parts 61 and 63;

j. “LDEP” means Georgia Gulf’s Leak Detection and Elimination Plan for the Aberdeen Facility;

k. “MCEQ” shall mean the Mississippi Commission on Environmental Quality on behalf of the State of Mississippi and the Mississippi Department of Environmental Quality;

l. “Paragraph” shall mean a portion of this Decree identified by an arabic numeral;

m. “Parties” shall mean the United States, MCEQ, and Georgia Gulf;

n. “Pond 1” shall mean the concrete basin at Georgia Gulf’s Aberdeen Facility identified as Pond # 1 on the map attached hereto as Appendix A;

o. “Pond 3” shall mean the surface impoundment at the Aberdeen Facility identified as Pond # 3 on the map attached hereto as Appendix A;

- p. “ROL” shall mean reactor opening loss;
- q. “RVCM” shall mean residual vinyl chloride monomer;
- r. “Section” shall mean a portion of this Decree identified by a Roman numeral;
- s. “SOP” shall mean written standard operating procedures developed or amended by Georgia Gulf pursuant to Section V (Compliance Requirements);
- t. “SPCC Plan” shall mean the Spill Prevention, Control and Countermeasures Plan for the Aberdeen Facility in effect at the time of lodging;
- u. “State” or “Mississippi” shall mean the State of Mississippi;
- v. “Storm Water Permit” shall mean Storm Water Baseline General Permit to Discharge Storm Water in Accordance With The National Pollution Discharge Elimination System or NPDES, No. MSR0015464, issued on February 26, 2002, pursuant to the NPDES storm water regulatory program, Section 49-17-1 *et seq.*, Mississippi Code of 1972, and the regulations and standards adopted and promulgated thereunder, and under the authority granted pursuant to Section 402(b) of the CWA, 33 U.S.C. § 1342(b), applicable to the

Aberdeen Facility, as it may from time to time be amended or renewed, or subsequent approved permits;

w. “SWPPP” shall mean Storm Water Pollution Prevention Plan prepared by Georgia Gulf for the Facility in accordance with Georgia Gulf’s Storm Water Permit in effect at the time of lodging;

x. “Title V Permit” shall mean air pollution control permit No. 1840-00014 issued by MCEQ to Georgia Gulf for the Aberdeen Facility, as it may from time to time be amended or renewed, or subsequent approved permits;
and

y. “United States” shall mean the United States of America, acting on behalf of EPA.

IV. CIVIL PENALTY

10. Within thirty (30) days after the Effective Date of this Consent Decree, Georgia Gulf shall pay the total sum of \$610,000.00 as a civil penalty to the United States and MCEQ, as set forth below in Paragraphs 11 and 13.

11. The civil penalty of \$305,000.00 to the United States shall be paid by FedWire Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice in accordance with written instructions to be provided to Georgia Gulf,

following lodging of the Consent Decree, by the Financial Litigation Unit of the U.S. Attorney's Office for the Northern District of Georgia.

a. Of the \$305,000.00 civil penalty, \$13,204.00 is toward CWA civil penalties as set forth below. At the time of payment, Georgia Gulf shall send a copy of the EFT authorization form and the EFT transaction record, together with a transmittal letter, which shall state that this payment is made toward CWA civil penalties in United States, et al. v. Georgia Gulf Chemicals and Vinyls, LLC, to be deposited into the Oil Spill Liability Trust Fund pursuant to 33 U.S.C. § 1321(s), § 4304 of Pub. L. No. 101-380, and 26 U.S.C. § 9509(b)(8), and shall reference the civil action number, and DOJ case number 90-5-2-1-08489, to the United States and the Coast Guard in accordance with Section XIV of this Decree (Notices); by email to acctsreceivable.CINWD@epa.gov; and to:

EPA Cincinnati Finance Office
26 Martin Luther King Drive
Cincinnati, Ohio 45268

b. Of the \$305,000.00 civil penalty, \$291,796.00 is a civil penalty as set forth below. At the time of payment, Georgia Gulf shall send a copy of the EFT authorization form and the EFT transaction record, together with a transmittal letter, which shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in United States, et al. v. Georgia Gulf Chemicals

and Vinyls, LLC, and shall reference the civil action number and DOJ case number 90-5-2-1-08489, to the United States in accordance with Section XIV of this Decree (Notices); by email to acctsreceivable.CINWD@epa.gov; and to:

EPA Cincinnati Finance Office
26 Martin Luther King Drive
Cincinnati, Ohio 45268

12. Georgia Gulf shall not deduct the civil penalty paid under this Section in calculating its federal income tax.

13. No later than thirty (30) days after the Effective Date of this Consent Decree, Georgia Gulf shall pay a civil penalty of \$305,000.00 to MCEQ. Such payment shall be made by certified or corporate check payable to the Mississippi Department of Environmental Quality and sent to the following address, together with a transmittal letter, which shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in United States, et al. v. Georgia Gulf Chemicals and Vinyls, LLC:

Mississippi Department of Environmental Quality
c/o Mona Varner
P.O. Box 20305
Jackson, MS 39289-1305

V. COMPLIANCE REQUIREMENTS

Deliverables Under Consent Decree

14. Approval of Deliverables. All documents required to be submitted for approval under this Consent Decree shall be submitted to EPA and MCEQ pursuant to Section XIV (Notices). After review of any plan, report, SOP, or other item that is required to be submitted pursuant to this Consent Decree, EPA, after consultation with MCEQ, shall in writing: (a) approve the submission; (b) approve the submission upon specified conditions; (c) approve part of the submission and disapprove the remainder; or (d) disapprove the submission.

15. If the submission that is required to be submitted for approval is approved pursuant to Paragraph 14 Georgia Gulf shall take all actions required by the plan, report, SOP or other document, in accordance with the schedules and requirements of the plan, report, SOP or other document, as approved. If the submission is conditionally approved or approved only in part, pursuant to Paragraph 14(b) or (c), Georgia Gulf shall, upon written direction of EPA, after consultation with MCEQ, take all actions required by the approved plan, report, SOP or other item that EPA, after consultation with MCEQ, determines are technically severable from any disapproved portions, subject to Georgia Gulf's

right to dispute only the specified conditions or the disapproved portions, under Section X of this Decree (Dispute Resolution).

16. If the submission that is required to be submitted for approval is disapproved in whole or in part pursuant to Paragraph 14(c) or (d), Georgia Gulf shall, within fifteen (15) working days or such other time as the Parties agree to in writing, correct all deficiencies and resubmit the plan, report, SOP or other item, or disapproved portion thereof, for approval, in accordance with the preceding Paragraphs, unless Georgia Gulf initiates dispute resolution under Section X of this Decree (Dispute Resolution). If the resubmission is approved in whole or in part, Georgia Gulf shall proceed in accordance with the preceding Paragraph.

17. Any stipulated penalties applicable to the original submission, as provided in Section VIII of this Decree (Stipulated Penalties), shall accrue during the fifteen (15) working day period or other specified period, but shall not be payable unless the resubmission is untimely or is disapproved in whole or in part; provided that, if the original submission was so deficient as to constitute a material breach of Georgia Gulf's obligations under this Decree, the stipulated penalties applicable to the original submission shall be due and payable notwithstanding any subsequent resubmission. Any determination by EPA or MCEQ that a resubmission is materially deficient is subject to Georgia Gulf's

right to initiate dispute resolution under Section X of this Consent Decree (Dispute Resolution).

18. If a resubmitted plan, report, SOP or other item, or portion thereof, is disapproved in whole or in part, EPA may, after consultation with MCEQ, again require Georgia Gulf to correct any deficiencies, in accordance with the preceding Paragraphs, or may itself correct any deficiencies, subject to Georgia Gulf's right to invoke dispute resolution and the right of EPA and MCEQ to seek stipulated penalties as provided in the preceding Paragraphs.

19. Subject to Georgia Gulf's right to invoke dispute resolution under Section X of the Consent Decree (Dispute Resolution), Georgia Gulf's failure to complete or implement any of the requirements of this Section V (Compliance Requirements) shall be subject to stipulated penalties pursuant to Section VIII of the Consent Decree (Stipulated Penalties), unless otherwise provided for in Paragraph 7 above.

20. Permits. Where any compliance obligation under this Section requires Georgia Gulf to obtain a federal, state, or local permit or approval, Georgia Gulf shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals. Georgia Gulf may seek relief under the provisions of Section IX of this Consent Decree (Force Majeure)

for any delay in the performance of any such obligation resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, if Georgia Gulf has submitted timely and complete applications and has taken all other actions necessary to obtain all such permits or approvals.

Georgia Gulf, however, shall not be required to submit an application to obtain a permit under RCRA or state hazardous waste law to conduct the removal of PVC solids from Pond 1 and the Inlet into Pond 3, pursuant to Paragraph 30 (Removal of PVC Solids from Ponds 1 and 3), provided that the removal of such PVC solids is conducted in compliance with the terms and conditions of this Consent Decree.

21. Adoption of New and/or Revised Standard Operating Procedures (SOPs). Georgia Gulf will adopt the following new and/or revised RCRA SOPs as set forth below in Paragraphs 21(a)-(c). Georgia Gulf shall submit to EPA and MCEQ pursuant to Paragraph 14 the SOPs described below within forty-five (45) days of the Effective Date of the Consent Decree. Within forty-five (45) days of approval of each SOP pursuant to Paragraph 14 of the Consent Decree, Georgia Gulf shall implement each approved SOP at the Aberdeen Facility. Failure to adopt and/or failure to follow each such SOP will be subject to stipulated penalties pursuant to Section VIII of the Consent Decree (Stipulated Penalties).

a. SOP for Labeling of Containers. Georgia Gulf shall implement procedures and memorialize such procedures in an SOP for compliance with 40 C.F.R. § 262.34 and MDEQ, Office of Pollution Control, Hazardous Waste Management Regulations, HW-1 (“MHWMR”), § 262.34(c)(1), as incorporated by reference in MHWMR Part 262 with respect to labeling containers.

b. Roof of Plasticizer Building SOP. Georgia Gulf shall implement appropriate procedures in accordance with 40 C.F.R. § 264.31 to minimize waste meeting the U190 Hazardous Waste listing description, if any, from accumulating on the roof of the plasticizer building, and memorialize such procedures in an SOP. Nothing in this provision is intended to alter or modify any provision of RCRA or its implementing regulations, including, but not limited to, 40 C.F.R. § 261.3(a)(2)(iv)(D).

c. Hazardous Waste Determinations and Management SOP. Georgia Gulf shall update, revise and/or develop an SOP for documenting the determination of Hazardous Waste pursuant to 40 C.F.R. § 262.11 and managing the Hazardous Waste in accordance with 40 C.F.R. § 262.34 as incorporated by reference in MHWMR Part 262, this Paragraph, and Appendix B (Summary of Waste Determination Procedures). The purpose of this SOP is to establish a

system for documenting Hazardous Waste determinations of any and all waste streams.

22. Installation and Operation of Air Stripper #1 Prior to Construction of the Above-Ground PVC Solids Removal Unit.

a. Within one hundred eighty (180) days of the Effective Date of the Consent Decree, Georgia Gulf shall submit to EPA and MCEQ for approval pursuant to Paragraph 14, a proposal accompanied by a Work Plan, for the design, construction, installation and operation of a Volatile Organic Compound (“VOC”) air stripper, air sparger, or other substantially similar technology (“VOC Air Stripper #1” or “Air Stripper #1”) that shall be installed between Pond 1 and Pond 3 prior to the construction of the Above-Ground PVC Solids Removal Unit pursuant to Paragraph 23 of this Consent Decree. Georgia Gulf shall also submit to EPA and MCEQ for approval, pursuant to Paragraph 14, a sampling and analysis plan (“Phase I Sampling Plan”) that shall be implemented after VOC Air Stripper #1 is operating. The Phase I Sampling Plan shall be designed to verify that no Hazardous Waste, as defined by 40 C.F.R. Part 261, Subparts C and D, is being discharged into Pond 3, and that the wastewater discharged to Pond 3 meets the applicable universal treatment standards set forth in 40 C.F.R. § 268.48, as limited to the hazardous constituents identified in the

Hazardous Waste Determination and Management SOP implemented pursuant to Paragraph 21(c) of this Consent Decree. The Phase I Sampling Plan shall conform to applicable provisions of EPA's Requirements for a Quality Assurance Project Plan (EPA QA-R5, March 2001), and be developed in accordance with RCRA and its implementing regulations, and shall be subject to the reporting requirements set forth at Section VII (Reporting Requirements).

b. Within one hundred and eighty-five (185) days after approval of the Work Plan and the Phase I Sampling Plan by EPA pursuant to Paragraph 14, Georgia Gulf shall design, construct, complete installation, and begin operation of VOC Air Stripper #1.

c. Beginning on the day on which the VOC Air Stripper #1 becomes operational (which, for purposes of this provision, shall be the date on which the VOC Air Stripper #1 is fully functional following an initial start-up period and any necessary debugging of the system, not to exceed a total of ten (10) days after completion of installation), and thereafter, Georgia Gulf shall conduct sampling in accordance with the approved Phase I Sampling Plan.

d. If the analytical results of the sampling taken pursuant to Paragraph 22(c) above demonstrates that Hazardous Waste, as defined by 40 C.F.R. Part 261, Subparts C and D, is being discharged into Pond 3, or that the

wastewater discharged to Pond 3 does not meet the applicable universal treatment standards set forth in 40 C.F.R. § 268.48, as limited to the hazardous constituents identified in the Hazardous Waste Determination and Management SOP implemented pursuant to Paragraph 21(c) of this Consent Decree, Georgia Gulf shall comply with the Backup Plan developed pursuant to Paragraph 25(e), until such time as VOC Air Stripper #1 is working as designed to verify that no Hazardous Waste, as defined by 40 C.F.R. Part 261, Subparts C and D, is being discharged to Pond 3, and that the wastewater discharged to Pond 3 meets the applicable universal treatment standards set forth in 40 C.F.R. § 268.48, as limited to the hazardous constituents identified in the Hazardous Waste Determination and Management SOP implemented pursuant to Paragraph 21(c) of this Consent Decree.

e. Georgia Gulf shall submit the analytical results of the Phase I Sampling Plan required pursuant to Paragraph 22(c) above to EPA and MCEQ by electronic submission within thirty (30) days of receiving the analytical results under Paragraph 22(a) above, except that Georgia Gulf shall notify EPA and MCEQ within twenty-four (24) hours of receiving any analytical results that demonstrate, in accordance with 40 C.F.R. Part 261, Subparts C and D, that Hazardous Waste is entering Pond 3, or that the wastewater discharged to Pond 3

does not meet the applicable universal treatment standards set forth in 40 C.F.R. § 268.48, as limited to the hazardous constituents identified in the Hazardous Waste Determination and Management SOP implemented pursuant to Paragraph 21(c) of this Consent Decree. The analytical results provided to EPA by Georgia Gulf shall be subject to the reporting requirements set forth at Section VII (Reporting Requirements).

f. Georgia Gulf may continue to discharge wastewater from Pond 1 to Pond 3 during the installation of Air Stripper #1 pursuant to the requirements of this Paragraph 22, provided that such continued use and operation is substantially the same as Georgia Gulf's use and operation as of the date of the Inspection. This Paragraph 22(f) is expressly conditioned upon Georgia Gulf's satisfactory performance of the requirements of Section V (Compliance Requirements) of the Consent Decree.

23. Above-Ground PVC Solids Removal Unit. Georgia Gulf shall design, construct, complete installation and begin operation of the Above-Ground PVC Solids Removal Unit at the Aberdeen Facility within fifty-two (52) months of the Effective Date of the Consent Decree. The Above-Ground PVC Solids Removal Unit will remove solids prior to the discharge of wastewater to Air Stripper #1 or #2. The Above-Ground PVC Solids Removal Unit may include an

in-ground collection basin and associated sumps and pumps to enable the collection and transfer of the water into and from the Above-Ground PVC Solids Removal Unit. Georgia Gulf shall develop an SOP to routinely inspect all equipment associated with the Above-Ground PVC Solids Removal Unit, including any in-ground collection basin, to verify that there are no leaks in the equipment or in-ground collection basin, and provide for prompt repair of any leaks that are discovered.

24. VOC Air Stripper that is Operable with Above-Ground PVC Solids Removal Unit. If VOC Air Stripper #1 installed pursuant to Paragraph 22(b) is not operable with the Above-Ground PVC Solids Removal Unit, Georgia Gulf shall design, construct, complete installation, and begin operation of a new VOC Air Stripper, VOC Air Stripper #2, that is operable with the Above-Ground PVC Solids Removal Unit at the Aberdeen Facility within fifty-two (52) months of the Effective Date of the Consent Decree and no longer operate Air Stripper #1.

25. Project Plan. Within ninety (90) days of the Effective Date of the Consent Decree, Georgia Gulf shall submit a Project Plan to EPA and MCEQ for approval pursuant to Paragraph 14 that details Georgia Gulf's plan for designing, constructing, installing and operating the Above-Ground PVC Solids

Removal Unit and Air Stripper #1 or #2 within fifty-two (52) months of the Effective Date of the Consent Decree. The Project Plan shall include:

a. A list of and detailed description of the major milestones for designing, constructing, installing and beginning operation of the Above-Ground PVC Solids Removal Unit and Air Stripper #2, should Air Stripper #2 be necessary, and the tasks necessary to accomplish each of the major milestones. The detailed description of major milestones required by this Section will include a schedule for completion of the design phase and the submission of a comprehensive detailed description of the Above-Ground PVC Solids Removal Unit, including all components and the associated process flow diagrams.

b. A schedule that sets forth the specific dates for completion of each task and major milestone identified in Paragraph 25(a), which will provide for the completion of the Above-Ground PVC Solids Removal Unit that is operable with either Air Stripper #1 or Air Stripper #2, as applicable, within fifty-two (52) months of the Effective Date of the Consent Decree, except as otherwise provided in this Paragraph. For every report, plan, document or other item that Georgia Gulf submits to EPA and MCEQ, Georgia Gulf shall also build into the 52-month schedule the following: (1) fifteen (15) working days from the receipt of EPA's and MCEQ's response for Georgia Gulf to correct all

deficiencies and resubmit the plan, report, or other item to EPA and MCEQ; and (2) twenty (20) working days from receipt of the resubmittal for EPA and MCEQ to review the resubmission and provide a response to Georgia Gulf to the resubmission. There is no requirement that EPA or MCEQ complete their review or that EPA approve or disapprove the resubmittal within twenty (20) working days. In the event that EPA takes longer than twenty (20) working days to review and approve or disapprove pursuant to Paragraph 14 of a resubmission under (2) above, the schedule shall be extended one working day for each day of review beyond twenty (20) working days. The schedule shall also take into account that Georgia Gulf, EPA or MCEQ may request meetings or conferences to discuss compliance with this Section, and those meeting times should be contemplated as the scheduling is prepared so as not to delay the completion of the Above-Ground PVC Solids Removal Unit and the operable Air Stripper, either Air Stripper #1 or #2, within fifty-two (52) months of the Effective Date of the Consent Decree.

c. The information or documentation Georgia Gulf will need to accomplish each task identified in Paragraph 25(a), including any regulatory permits necessary to construct, install or operate the Above-Ground PVC Solids Removal Unit or Air Stripper #1 or #2.

d. A sampling plan (“Phase II Sampling Plan”) to characterize the wastewater entering Pond 3 that shall conform to applicable provisions of EPA’s Requirements for a Quality Assurance Project Plan (EPA QA-R5, March 2001) and be developed in accordance with RCRA and its implementing regulations, and shall be submitted for approval pursuant to Paragraph 14. This Sampling Plan shall include the following requirements:

i. Start up of Above-Ground PVC Solids Removal Unit and Air Stripper #1 or #2. Within twenty-four (24) hours after the Above-Ground PVC Solids Removal Unit and Air Stripper #1 or #2 become operational, Georgia Gulf shall conduct initial sampling for thirty (30) days to verify that the Above-Ground PVC Solids Removal Unit and Air Stripper #1 or #2 are working as designed and in accordance with applicable permit applications, operating permits and regulations, and that no Hazardous Waste is being discharged to Pond 3, in accordance with 40 C.F.R. Part 261, Subparts C and D, and that the wastewater discharged to Pond 3 meets the applicable universal treatment standards set forth in 40 C.F.R. § 268.48, as limited to the hazardous constituents identified in the Hazardous Waste Determination and Management SOP implemented pursuant to Paragraph 21(c) of this Consent Decree. During the initial thirty (30) day sampling period, Georgia Gulf shall establish operating

parameters for the Above-Ground PVC Solids Removal Unit and the VOC Air Stripper #1 or #2 to ensure proper operation, and determine justifications for the operating parameters that have been set. Georgia Gulf shall also maintain a log of the operations and maintenance conducted on the VOC Air Stripper #1 or #2, including but not limited to periods of startup, shutdown, and malfunction, and the reasons therefor. No later than thirty (30) days after the conclusion of the thirty (30) day initial sampling period described above, Georgia Gulf shall submit to EPA and MCEQ pursuant to Paragraph 14 a written description of the operating parameters and justifications for the operating parameters and the SOP for inspecting the Above-Ground PVC Solids Removal Unit as set forth in Paragraph 23 of the Consent Decree.

ii. Monitoring of the Operation of the Above-Ground PVC Solids Removal Unit and Air Stripper #1 or #2. After the initial thirty (30) days of sampling referred to in Paragraph 25(d)(i) of the Above-Ground PVC Solids Removal Unit and Air Stripper #1 or #2, Georgia Gulf shall conduct additional sampling for a period of six (6) months to verify that Hazardous Waste, as defined by 40 C.F.R. Part 261, Subparts C and D, is not being discharged to Pond 3, and that the wastewater discharged to Pond 3 meets the applicable universal treatment standards set forth in 40 C.F.R. § 268.48, as limited to the

hazardous constituents identified in the Hazardous Waste Determination and Management SOP implemented pursuant to Paragraph 21(c) of this Consent Decree. After the additional six (6) month period, Georgia Gulf shall conduct sampling, as set forth in the approved Phase II Sampling Plan, to verify that Hazardous Waste, as defined by 40 C.F.R. Part 261, Subparts C and D, is not being discharged to Pond 3, and that the wastewater discharged to Pond 3 meets the applicable universal treatment standards set forth in 40 C.F.R. § 268.48, as limited to the hazardous constituents identified in the Hazardous Waste Determination and Management SOP implemented pursuant to Paragraph 21(c) of this Consent Decree.

iii. Georgia Gulf shall submit the analytical results of the sampling taken in accordance with the Phase II Sampling Plan required pursuant to Paragraph 25(e) above to EPA and MCEQ by electronic submission within thirty (30) days of receiving the analytical results, except that Georgia Gulf shall notify EPA and MCEQ within twenty-four (24) hours of receiving any analytical results that demonstrate that Hazardous Waste is being discharged to Pond 3, as defined by 40 C.F.R. Part 261, Subparts C and D, or the wastewater discharged to Pond 3 does not meet the applicable universal treatment standards set forth in 40 C.F.R. § 268.48, as limited to the hazardous constituents identified

in the Hazardous Waste Determination and Management SOP implemented pursuant to Paragraph 21(c) of this Consent Decree. The analytical results provided to EPA and MCEQ by Georgia Gulf shall be subject to the reporting requirements set forth at Section VII (Reporting Requirements).

e. Backup Plan. The Project Plan shall set forth procedures that Georgia Gulf will follow during periods when the Above-Ground PVC Solids Removal Unit and/or Air Stripper #1 or #2 are not operating as designed or not operating at all, and the steps Georgia Gulf shall take to ensure that Hazardous Waste, as defined by 40 C.F.R. Part 261, Subparts C and D, is not entering Pond 3, and the wastewater discharged to Pond 3 meets the applicable universal treatment standards set forth in 40 C.F.R. § 268.48, as limited to the hazardous constituents identified in the Hazardous Waste Determination and Management SOP implemented pursuant to Paragraph 21(c) of this Consent Decree, during such periods. The Backup Plan shall be implemented for events such as routine maintenance, emergency shutdowns, or breakdowns of the Above-Ground PVC Solids Removal Unit and/or Air Stripper #1 or #2. In no circumstances shall the Above-Ground PVC Solids Removal Unit operate independently of Air Stripper #1 or #2; that is, no wastewater can enter Pond 3 from the above-Ground PVC Solids Removal Unit without having first passed

through Air Stripper #1 or #2 while operational, unless Georgia Gulf provides documentation and information to EPA pursuant to Paragraph 14 to demonstrate that it is not necessary to operate Air Stripper #1 or #2 to prevent Hazardous Waste from entering Pond 3, in accordance with 40 C.F.R. Part 261, Subparts C and D, or to ensure that the wastewater discharged to Pond 3 meets the applicable universal treatment standards set forth in 40 C.F.R. § 268.48, as limited to the hazardous constituents identified in the Hazardous Waste Determination and Management SOP implemented pursuant to Paragraph 21(c) of this Consent Decree, and EPA also approves Georgia Gulf's request to no longer operate Air Stripper #1 or #2.

26. Work Plan and Project Scope Meeting. Should EPA and/or MCEQ request a meeting with Georgia Gulf following submission of the Work Plan pursuant to Paragraph 22(a) or Project Plan pursuant to Paragraph 25, within ten (10) days of such request, Georgia Gulf and/or its consultants shall have an in-person conference or teleconference with EPA and MCEQ at which EPA and MCEQ will have the opportunity to request additional information (written or verbal), and to address any questions or concerns that EPA and MCEQ may have about the Project Plan or Work Plan. EPA and/or MCEQ may require additional conferences with Georgia Gulf and/or its consultants before EPA approves or

disapproves of the Project Plan or Work Plan, as applicable, pursuant to Paragraph 14.

27. Progress Reports. After EPA has approved the Project Plan, Georgia Gulf shall submit semi-annual reports to EPA and MCEQ pursuant to Section VII (Reporting Requirements) (“Progress Reports”).

28. Final Construction Report. Within forty (40) days following the date on which the Above-Ground PVC Solids Removal Unit and/or Air Stripper #1 or #2 become operational, Georgia Gulf shall submit a Final Construction Report pursuant to Section VII (Reporting Requirements). In addition to the requirements set forth in Section VII (Reporting Requirements), the Final Construction report shall include the following:

- a. Final engineering drawings of the Above-Ground PVC Solids Removal Unit and Air Stripper #1 or #2.
- b. Analytical results from those samples taken in accordance with the Phase I, or, as applicable, the Phase II approved Sampling Plan that have not already been provided to EPA and MCEQ.

29. Post-Construction Sampling Results. Georgia Gulf shall submit analytical results of samples taken pursuant to Paragraph 25(d)(iii) to EPA and MCEQ within the time frame provided therein. If the results demonstrate that

the Above-Ground PVC Solids Removal Unit and/or Air Stripper #1 or #2 are not working as designed or that Hazardous Waste, as defined by 40 C.F.R. Part 261, Subparts C and D, is entering Pond 3, or that the water does not meet the applicable universal treatment standards set forth in 40 C.F.R. § 268.48, as limited to the hazardous constituents identified in the Hazardous Waste Determination and Management SOP implemented pursuant to Paragraph 21(c) of this Consent Decree, Georgia Gulf shall implement the Backup Plan set forth in Paragraph 25(e), as approved by EPA pursuant to Paragraph 14.

30. Removal of PVC Solids from Ponds 1 and 3. Within sixty (60) days of the date on which the Above-Ground PVC Solids Removal Unit and Air Stripper #1 or #2 become operational, Georgia Gulf shall remove all PVC solids from Pond 1 and all PVC solids located in the Inlet in Pond 3, and use, sell, or, if such solids cannot be used or sold, dispose of such solids in accordance with RCRA and its implementing regulations.

a. Pond 1 Leaking. As of the Effective Date of the Consent Decree and during such time as Georgia Gulf is performing the requirements under Paragraph 23 (Above-Ground PVC Solids Removal Unit) through and including Paragraph 28 (Final Construction Report) of the Consent Decree, Georgia Gulf may continue to use and operate Pond 1 to receive water, so long as

such continued use and operation is substantially the same as Georgia Gulf's use and operation as of the date of the Inspection. If, during performance of the requirements under Paragraph 23 (Above-Ground Solids Removal Unit) through and including 28 (Final Construction Report), Georgia Gulf becomes aware that Pond 1 is leaking, Georgia Gulf shall notify EPA and MCEQ by electronic means within twenty-four (24) hours of becoming aware of such information. Within sixty (60) days of becoming aware that Pond 1 is leaking, Georgia Gulf shall submit to EPA and MCEQ for approval pursuant to Paragraph 14 a work plan ("Pond 1 Work Plan") that shall include the following:

- i. A description of the materials managed in Pond 1;
- ii. A description of the event or circumstances that likely caused the leak;
- iii. A description of the methods Georgia Gulf will use to characterize the nature and the extent of the leaking from Pond 1 into the surrounding soil;
- iv. A description of the repairs that Georgia Gulf will make to Pond 1 to prevent the continued leaking of Pond 1, and/or the process that Georgia Gulf will follow to take Pond 1 out of service, if taking Pond 1 out of service is necessary;

v. A description of the actions that Georgia Gulf will take to remediate the leak into the surrounding soil, if any such action is required;

vi. A list of the deliverables that Georgia Gulf will provide to EPA and MCEQ as to the work that is being conducted in Paragraph 30(a)(i)-(v); and

vii. A schedule for completing the activities described in Paragraph 30(a)(i)-(vi) above.

b. Within sixty (60) days of EPA's approval of the Pond 1 Work Plan, Georgia Gulf shall implement the Pond 1 Plan pursuant to this Paragraph 30. This Paragraph 30 is expressly conditioned upon Georgia Gulf's satisfactory performance of the requirements of Section V (Compliance Requirements) of the Consent Decree.

31. If Georgia Gulf decides to use Pond 1 to direct storm water away from process areas during rain events, Georgia Gulf shall revise its Storm Water Pollution Prevention Plan ("SWPPP") to provide for such use of the Pond, and comply with the Storm Water Permit and the revised SWPPP. If Hazardous Waste is treated, stored, or disposed of in Pond 1 after Pond 1 is converted to direct storm water away from process areas during rain events, then Pond 1 shall be subject to 40 C.F.R. Part 264, Subpart J or Subpart K, whichever is applicable.

32. Adoption of New and/or Revised CAA SOPs. Georgia Gulf will adopt the following new and/or revised CAA SOPs as set forth below. Georgia Gulf shall submit to EPA and MCEQ for approval pursuant to Paragraph 14 the SOPs described below within forty-five (45) days of the Effective Date of the Consent Decree. Within thirty (30) days of approval of each SOP pursuant to Paragraph 14 of the Consent Decree, Georgia Gulf shall implement each approved SOP at the Aberdeen Facility. Failure to adopt and/or failure to follow each such SOP will be subject to stipulated penalties pursuant to Section VIII of the Consent Decree (Stipulated Penalties).

a. Weekly Pump Records. Georgia Gulf shall implement appropriate procedures in an SOP in accordance with 40 C.F.R. § 70.6(a)(3)(ii)(B) to maintain for five (5) years all required records, including weekly pump inspection records, and memorialize such procedures in an SOP.

b. Expiration Date for Calibration Gases. Georgia Gulf shall adopt procedures in an SOP to add the expiration date for calibration gases for analysis pursuant to Method 107, 40 C.F.R. Part 61, Appendix B (Method 107 test method), to its existing computerized calendar system.

c. Twenty-Four Hour RVCM Calculation. For any internally stripped batches, Georgia Gulf shall calculate the twenty-four (24) hour

average RVCM concentration in accordance with 40 C.F.R. § 61.64(e)(1)(ii) or 40 C.F.R. § 61.64(f)(1)(ii) to verify compliance with its Title V Permit and use the either the equation required by 40 C.F.R. § 61.70(c)(2)(v) or 40 C.F.R. § 61.70(c)(4)(iv) as applicable and memorialize such procedures in an SOP. Within thirty (30) days of the Effective Date of the Consent Decree, Georgia Gulf's 1996 variance relating to sampling frequency ("1996 Variance") shall be deemed null and void.

33. Method 107 Sampling.

a. Reactor Clean-Out Water. As of the Effective Date of the Consent Decree, Georgia Gulf shall conduct Method 107 sampling on each reactor cleaning batch to ensure that RVCM levels are below 10 ppm in accordance with 40 C.F.R. §§ 61.65(b)(8), (b)(9)(i), 61.67(g)(2) and 40 C.F.R. Part 61, Subpart V.

b. Method 107 for Inprocess Wastewater. As of the Effective Date of the Consent Decree, Georgia Gulf shall comply with its existing SOP to conduct Method 107 sampling for inprocess wastewater

34. LDAR Program. Within ninety (90) days of the Effective Date of the Consent Decree, Georgia Gulf shall submit to EPA and MCEQ pursuant to Paragraph 14, a revised leak detection and elimination plan ("LDEP")

that meets the applicable requirements of 40 C.F.R. § 61.65(b)(8). The LDEP shall provide the following:

- a. All information required by 40 C.F.R. § 61.65(b)(8).
- b. Identification of three process units and a description

thereof. For each process unit, include the following:

- i. a description of the procedure for maintaining an accurate inventory, which may include Piping and Instrumentation Diagrams (“P&IDs”) of each of the components in VOC service (relief valves, loading/unloading lines, slip gauges, rotating pumps, reciprocating pumps, rotating compressors, reciprocating compressors, agitators, sampling lines, and valves);

- ii. an inventory of unsafe to monitor valves, with an explanation as to why they are unsafe to monitor and a written plan to monitor valves, or a statement that there are no such valves;

- iii. an inventory of difficult to monitor valves, with an explanation as to why the valves are difficult to monitor, and a written plan for monitoring the valves, or a statement that there are no such valves;

- iv. as components are added to or removed from VOC service, Georgia Gulf shall amend the inventory of components accordingly, and

retain records of such changes for five (5) years pursuant to Section 5.a.3 of the Title V Permit;

v. detailed description of ambient monitoring system operating program as per 40 C.F.R. § 61.65(b)(8)(i); and

vi. all required components in VOC service, and include Alpha Metha Styrene, in its LDAR program in compliance with 40 C.F.R. § 61.65(b)(8) and 40 C.F.R. Part 61, Subpart V.

35. Georgia Gulf shall use Method 107 to sample each batch from the batch water stripper effluent in compliance with 40 C.F.R. §§ 61.65(b)(9)(i) and 61.67(g)(2), unless and until a request for a variance from such regulation has been approved by EPA. EPA's decision whether or not to grant such a variance shall not be subject to dispute resolution under Section X of this Consent Decree (Dispute Resolution). In the event that Georgia Gulf receives a new variance from EPA as set forth in this Paragraph, any such variance will be incorporated by reference into the non-Title V permits applicable to the Aberdeen Facility and then incorporated into the Title V Permit pursuant to Paragraph 37 of the Consent Decree.

36. September 2000 Variance. As of the Effective Date of the Consent Decree, Georgia Gulf shall comply with the September 11, 2000 variance

("2000 Variance") providing for the use of alternative procedures to conduct EPA Method 107 performance testing as required by 40 C.F.R. § 61.70, including by determining a new mean percent total solids value at least annually. The 2000 Variance shall further be incorporated by reference into the non-Title V permits applicable to the Aberdeen Facility and then incorporated into the Title V Permit pursuant to Paragraph 37 of the Consent Decree.

37. Incorporating Consent Decree Requirements Into Permits. As soon as practicable, but in no event later than the times set forth in subparagraphs (a) through (f) below, Georgia Gulf will submit an appropriate application to MCEQ to incorporate the specific requirements of the Consent Decree listed in Paragraph 37(a) into federally enforceable non-Title V permits, whether as new permits or modifications to existing permits, that will ensure that the requirements survive the termination of this Consent Decree. Following submission of the appropriate application, Georgia Gulf will cooperate with MCEQ by promptly submitting to MCEQ all information that it seeks following its receipt of the application materials. Upon issuance of such permit, or in conjunction with such permitting, or in modifying any existing permit, Georgia Gulf will file any applications necessary to incorporate by reference the requirements of that permit into the Title V Permit of the Aberdeen Facility. The following requirements of

this Consent Decree shall be incorporated into permits pursuant to this Paragraph 37:

a. The requirement in the 2000 Variance for calculating percent solids in Paragraph 36, within ninety (90) days after the Effective Date of the Consent Decree;

b. Any variance or alternative that is issued related to Georgia Gulf's use of Method 107 to sample each batch from the batch wastewater stripper effluent as described in Paragraph 35, within ninety (90) days after issuance of such variance or alternative;

c. Backup Plan set forth in Paragraph 25(e), as approved, within ninety (90) days of approval of such Backup Plan pursuant to Paragraph 14 of the Consent Decree;

d. Requirements relating to the Above-Ground PVC Solids Removal Unit and Air Stripper #1 or #2, including requirements that any VOC emissions from the Above-Ground PVC Solids Removal Unit and Air Stripper #1 or #2 comply with the Mississippi State Implementation Plan ("SIP") and that Georgia Gulf maintains a log of operating parameters pursuant to Paragraph 25(d)(i), within ninety (90) days after the Above-Ground Solids Removal Unit becomes operational pursuant to Paragraph 25(d)(i) of the Consent Decree;

e. The LDEP Plan as revised pursuant to Paragraph 34, within ninety (90) days of submittal to EPA and MCEQ pursuant to Paragraph 34 of this Consent Decree; and

f. All CAA SOPs, as approved, implemented pursuant to this Consent Decree, within ninety (90) days after the Effective Date of the Consent Decree.

38. Mechanism for Title V Incorporation. The Parties agree that the incorporation by reference of any requirement of this Consent Decree into the Title V Permit for the Aberdeen Facility will be in accordance with the MCEQ Title V rules.

39. Within thirty (30) days of the Effective Date of the Consent Decree, Georgia Gulf shall re-submit a Baseline General Notice of Intent (“BNOI”) to discharge pursuant to the Storm Water Permit that will include each of the following four storm water discharge points: (1) pipe discharging to tributary of James Creek beyond west fence line of property; (2) uncontrolled pipes draining from process area; (3) uncontrolled pipe draining from pressurization supply air stack process area; and (4) drainage ditch from “lay down” yard, in accordance with Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

40. Within thirty (30) days of the Effective Date of the Consent Decree, Georgia Gulf shall revise its SWPPP for the Aberdeen Facility as set forth below to ensure compliance with the Storm Water Permit and conforming to EPA's Guidance on developing pollution prevention plans and best management practices dated October 1992, Storm Water Management for Industrial Activities – Developing Pollution Prevention Plans and Best Management Practices, and provide a copy of the revised SWPPP to MCEQ. The revised SWPPP shall include the following requirements:

a. Identification of the four storm water discharge points identified in Paragraph 39 above.

b. A site map in the SWPPP showing the drainage area of each storm water outfall identified by number, each existing structural pollutant control measure, and the surface water areas as required by Part III.C.7.a(4) of the Storm Water Permit.

c. A revised Storm Water Management Controls section of the SWPPP to require assessment of the pollution potential of various sources at the Facility, including loading and unloading operations, outdoor storage areas such as the "lay down" yard as required by Part III.C.7.b(2) of the Storm Water Permit.

d. Require training components for persons responsible for implementing and/or complying with the requirements of the SWPPP, including adequate employee training focusing on areas such as 1) Risk Identification and Assessment/Material Inventory; 2) Sediment and Erosion Prevention; and 3) Preventative Maintenance in accordance with Part III.C.7.b.(2), (3) and (4) of the Storm Water Permit.

e. Require compliance with the Illicit Connections-Testing and Certification requirements set forth in Part III.C.7.b(8) of the Storm Water Permit and certify that all of the storm water discharges have been tested for the presence of non-storm water discharges, including the four storm water discharge points identified in Paragraph 39 and any other storm water discharges observed by the owner or operator not already identified. The certification shall include the test method(s), date(s), observation point(s) and results.

f. Include an SOP in the SWPPP that sets forth good housekeeping practices as required by Part III.C.7.b(5) of the Storm Water Permit to ensure that the storm water is free from debris, oil scum, and other floating materials other than in trace amounts, as required by Part IV.A.1 of the Storm Water Permit.

41. Within thirty (30) days of the Effective Date of the Consent Decree, Georgia Gulf shall work with the Local Emergency Planning Committee or its equivalent to prepare and subsequently review its emergency plan to include any Extremely Hazardous Substance (EHS) chemicals stored on-site within the meaning of Section 302 of EPCRA, 42 U.S.C. § 11002, not already included in its emergency plan, if any. Georgia Gulf shall comply with Section 303(d)(2) and (3) of EPCRA, 42 U.S.C. § 11003(d)(2) and (3).

42. As of the Effective Date of the Consent Decree, Georgia Gulf shall comply with the requirements of Section 312 of EPCRA, 42 U.S.C. § 11022, as applicable, based upon chemical use.

43. Within thirty (30) days of the Effective Date of the Consent Decree, Georgia Gulf shall revise the SPCC Plan for the Aberdeen Facility to comply with the applicable provisions of the 2002 SPCC Amendments as currently promulgated at 40 C.F.R. Part 112. The SPCC Plan shall be certified by a professional engineer. Georgia Gulf shall comply with the revised SPCC Plan.

VI. RESERVED

VII. REPORTING REQUIREMENTS

44. Georgia Gulf shall submit the following reports:

a. Within thirty (30) days after the end of each six-month period (*i.e.*, by January 30 and July 30 following the Effective Date of this Consent Decree, until termination of this Decree pursuant to Section XVIII (Termination), Georgia Gulf shall submit a Progress Report, as provided for in Paragraph 27 of this Consent Decree, for the preceding six-month period that shall include, but not be limited to, the status of any construction or compliance measures; completion of milestones; problems encountered or anticipated, together with implemented or proposed solutions; status of permit applications; operation and maintenance; and reports to state agencies.

b. All documents required to be submitted pursuant to Paragraphs 22(a), 22(e), 25(d)(iii), 28, and 30 of this Consent Decree.

c. If Georgia Gulf violates, or has reason to believe that it may violate, any requirement of this Consent Decree, Georgia Gulf shall notify the United States and MCEQ of such violation and its likely duration, in writing, within ten working days of the day Georgia Gulf first becomes aware of the violation, with an explanation of the violation's likely cause and of the remedial

steps taken, or to be taken, to prevent or minimize such violation. If the cause of a violation cannot be fully explained at the time the report is due, Georgia Gulf shall so state in the report. Georgia Gulf shall investigate the cause of the violation and shall then submit an amendment to the report, including a full explanation of the cause of the violation, within thirty (30) days of the day Georgia Gulf becomes aware of the cause of the violation. Nothing in this Paragraph or the following Paragraph relieves Georgia Gulf of its obligation to provide the notice required by Section IX of this Consent Decree (Force Majeure).

45. Whenever any violation of this Consent Decree or any other event affecting Georgia Gulf's performance under this Decree, or the performance of its Facility, may pose an immediate threat to the public health or welfare or the environment, Georgia Gulf shall notify EPA and MCEQ as per Section XIV (Notices), as well as EPA Region 4 Emergency Response, orally or by electronic or facsimile transmission as soon as possible, but no later than twenty-four (24) hours after Georgia Gulf first knew of, or should have known of, the violation or event. This procedure is in addition to the requirements set forth in the preceding Paragraph.

46. All reports shall be submitted to the persons designated in Section XIV of this Consent Decree (Notices), except that Georgia Gulf shall also notify EPA Region 4 Emergency Response as stated in Paragraph 45 above.

47. Each written report submitted by Georgia Gulf under this Section shall be signed by a responsible official or, if specifically designated by Georgia Gulf for this purpose, the plant manager of the Facility, as its duly authorized representative, of the submitting party and include the following certification:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all Appendices and that this document and its Appendices were prepared either by me personally or under my direction or supervision in accordance with a system designed to ensure that qualified and knowledgeable personnel properly gather and present the information contained therein. I further certify, based on my personal knowledge or on my inquiry of those individuals who manage the system or are directly responsible for obtaining the information, that the information is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowingly and willfully submitting a materially false statement.

This certification requirement does not apply to emergency or similar notifications where compliance would be impractical.

48. The reporting requirements of this Consent Decree do not relieve Georgia Gulf of any reporting obligations required by the CAA, RCRA, EPCRA, CERCLA, and CWA, or implementing regulations, or by any other federal, state, or local law, regulation, permit, or other requirement.

49. Any information provided pursuant to this Consent Decree may be used by the United States in any proceeding to enforce the provisions of this Consent Decree and as otherwise permitted by law.

VIII. STIPULATED PENALTIES

50. If Georgia Gulf fails to pay the civil penalty required to be paid under Section IV of this Decree (Civil Penalty) when due, Georgia Gulf shall pay a stipulated penalty of \$1,000 per day for each day that the payment is late for the first ten (10) days, together with interest. Thereafter, Georgia Gulf shall pay \$5,000 per day for each date that the payment is late, together with interest. Late payment of the civil penalty shall be made in accordance with Section IV (Civil Penalty), Paragraphs 11 and 13, above. Stipulated Penalties shall be paid in accordance with Section VIII (Stipulated Penalties), Paragraph 58, below. All transmittal correspondence shall state that any such payment is for late payment of the civil penalty due under this Decree, or for Stipulated Penalties for late

payment, as applicable, and shall include the identifying information set forth in Paragraphs 11 and 13, above.

51. Georgia Gulf shall be liable for Stipulated Penalties to the United States and MCEQ for violations of this Consent Decree as specified below, unless excused under Section IX (Force Majeure). A violation includes failing to perform any obligation required by the terms of this Decree, including any work plan, project plan, SOP, schedule, or any other document approved under this Decree, according to all applicable requirements of this Decree and within the specified time schedules established by or approved under this Decree.

52. Operation of Air Stripper #1, Compliance Milestone for Above-Ground PVC Solids Removal Unit and Air Stripper #1 and #2; and the Reporting and Repair of Leaking Pond 1.

The following Stipulated Penalties shall accrue per violation per day for failure to begin operation of Air Stripper #1 within the time period provided in Paragraphs 22(a)-(c) of the Consent Decree, or failure to begin operation of the Above-Ground PVC Solids Removal Unit and Air Stripper #1 or #2 pursuant to Paragraph 23 of the Consent Decree within fifty-two (52) months of the Effective Date of the Consent Decree, or failure to prepare the Pond 1 Work Plan and

submit it to EPA pursuant to Paragraph 30(a) within the time frame specified therein:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$2,000	1st through 14th day
\$3,500	15th through 30th day
\$5,000	31st day and beyond

53. Compliance Milestones

The following Stipulated Penalties shall accrue per violation per day for each violation of the requirements identified in Section V (Compliance Requirements), except for the requirement to complete installation and begin operation of the Above Ground PVC Solids Removal Unit and Air Stripper #1 and #2 within fifty-two (52) months referenced in Paragraph 52 above, or for failure to install and begin operation of the Air Stripper #1 within the time period required by Paragraph 22(a)-(c) of the Consent Decree, or for failure to repair Pond 1 in accordance with the schedule set forth in Paragraph 30(a):

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$1,000	1st through 14th day
\$1,500	15 th through 30 th day
\$3,500	31st day and beyond

54. Reporting Requirements. The following Stipulated Penalties shall accrue per violation per day for each violation of the reporting requirements of Section VII of this Consent Decree (Reporting Requirements):

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$1,000	1st through 14th day
\$1,250	15th through 30th day
\$2,000	31st day and beyond

55. Subject to the provisions of Paragraph 52-54, above, Stipulated Penalties under this Section shall begin to accrue on the day after performance is due or on the day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated Penalties shall accrue simultaneously for separate violations of this Consent Decree. However, stipulated penalties shall not accrue: (1) with respect to a deficient submission under Paragraph 14 during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Georgia Gulf of any deficiency; or (2) with respect to judicial review by this Court of any dispute under Section X (Dispute Resolution), during the period, if any, beginning on the 31st day after the Court's receipt of the final submission regarding the dispute until the date that the Court issues a final

decision regarding such dispute. Georgia Gulf shall pay any Stipulated Penalty within thirty (30) days of receiving the United States' (or MCEQ's, as applicable) written demand (stating the violation for which the claimed stipulated penalty relates and the amount the United States, or MCEQ, as applicable, is seeking for each violation) unless Georgia Gulf invokes dispute resolution. The United States, MCEQ, or both, may seek Stipulated Penalties under this Section. Where both sovereigns seek Stipulated Penalties for the same violation of this Consent Decree, Georgia Gulf shall pay fifty (50) percent to the United States and fifty (50) percent to MCEQ. Where only one sovereign demands Stipulated Penalties for a violation, it shall make that demand on its own behalf, and Georgia Gulf shall pay the full amount of the Stipulated Penalties due for the violation to that sovereign. The Plaintiff making a demand for payment of a stipulated penalty shall simultaneously send a copy of the demand to the other Plaintiff.

56. The United States or MCEQ may, in the unreviewable exercise of their discretion, reduce or waive Stipulated Penalties otherwise due that sovereign under this Consent Decree. The determination by one sovereign not to seek Stipulated Penalties, or subsequently to waive or reduce the amount it seeks, shall not preclude the other sovereign from seeking the full amount of Stipulated Penalties owing.

57. Stipulated Penalties shall continue to accrue as provided in Paragraph 55, above, during any dispute resolution, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA or MCEQ that is not appealed to the Court, Georgia Gulf shall pay accrued penalties determined to be owing, together with interest, to the United States or MCEQ within thirty (30) days of the effective date of the agreement or the receipt of EPA's or MCEQ's decision or order.

b. If the dispute is appealed to the Court and the United States or MCEQ prevails in whole or in part, Georgia Gulf shall pay all accrued penalties determined by the Court to be owing, together with interest, within sixty (60) days of receiving the final appellate court decision.

58. Georgia Gulf shall, as directed by the United States in its demand, pay Stipulated Penalties owing to the United States by EFT in accordance with Section IV, Paragraph 11, above or by certified or cashier's check in the amount due, payable to the "U.S. Department of Justice," referencing DOJ No. 90-5-2-1-08489, and delivered to the office of the United States Attorney, Northern District of Georgia, U.S. Courthouse, Suite 600, 75 Spring Street, Atlanta, Georgia

30303, Attn: Financial Litigation Unit. Georgia Gulf shall pay Stipulated Penalties owing to MCEQ in accordance with Section IV, Paragraph 13, above.

59. Georgia Gulf shall not deduct Stipulated Penalties paid under this Section in calculating its federal income tax.

60. If Georgia Gulf fails to pay Stipulated Penalties according to the terms of this Consent Decree, Georgia Gulf shall be liable for interest on such penalties, as provided for in 28 U.S.C. § 1961, accruing as of the date payment became due.

61. Subject to the provisions of Section XII of this Consent Decree (Effect of Settlement/Reservation of Rights), the Stipulated Penalties provided for in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available to the United States or MCEQ for Georgia Gulf's violation of this Consent Decree or applicable law. Where a violation of this Consent Decree is also a violation of relevant statutory or regulatory requirements, Georgia Gulf shall be allowed a credit, for any Stipulated Penalties paid, against any statutory penalties imposed for such violation.

IX. FORCE MAJEURE

62. A "force majeure event" is any event beyond the control of Georgia Gulf, its contractors, or any entity controlled by Georgia Gulf that delays

the performance of any obligation under this Consent Decree despite Georgia Gulf's best efforts to fulfill the obligation. "Best efforts" includes anticipating any potential force majeure event and addressing the effects of any such event (a) as it is occurring and (b) after it has occurred, to prevent or minimize any resulting delay to the greatest extent possible. "Force Majeure" does not include Georgia Gulf's financial inability to perform any obligation under this Consent Decree.

63. Georgia Gulf shall provide notice orally or by electronic or facsimile transmission as soon as possible, as provided in Section XIV of this Consent Decree (Notices), but not later than seventy-two (72) hours after the time Georgia Gulf first knew of, or by the exercise of due diligence, should have known of, a claimed force majeure event. Georgia Gulf shall also provide written notice, as provided in Section XIV of this Consent Decree (Notices), within seven days of the time Georgia Gulf first knew of, or by the exercise of due diligence, should have known of, the event. The notice shall state the anticipated duration of any delay; its cause(s); Georgia Gulf's past and proposed actions to prevent or minimize any delay; a schedule for carrying out those actions; and Georgia Gulf's rationale for attributing any delay to a force majeure event. Failure to provide oral and written notice as required by this Paragraph shall preclude Georgia Gulf from asserting any claim of force majeure.

64. If the United States, after reasonable opportunity for review and comment by MCEQ, agrees that a force majeure event has occurred, the United States may agree to extend the time for Georgia Gulf to perform the affected requirements for the time necessary to complete those obligations. An extension of time to perform the obligations affected by a force majeure event shall not, by itself, extend the time to perform any other obligation. Where the United States agrees to an extension of time, the appropriate modification shall be made pursuant to Section XVII of this Consent Decree (Modification).

65. If the United States, after reasonable opportunity for review and comment by MCEQ, does not agree that a force majeure event has occurred, or does not agree to the extension of time sought by Georgia Gulf, the United States' position shall be binding, unless Georgia Gulf invokes Dispute Resolution under Section X of this Consent Decree (Dispute Resolution). In any such dispute, Georgia Gulf bears the burden of proving, by a preponderance of the evidence, that each claimed force majeure event is a force majeure event, that Georgia Gulf gave the notice required by Paragraph 63, that the force majeure event caused any delay Georgia Gulf claims was attributable to that event, and that Georgia Gulf exercised best efforts to prevent or minimize any delay caused by the event.

X. DISPUTE RESOLUTION

66. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. Georgia Gulf's failure to seek resolution of a dispute under this Section shall preclude Georgia Gulf from raising any such issue as a defense to an action by the United States or MCEQ to enforce any obligation of Georgia Gulf arising under this Decree.

67. Informal Dispute Resolution. Any dispute subject to dispute resolution under this Consent Decree shall first be the subject of informal negotiations, which may include any third-party assisted, non-binding alternative dispute resolution process agreeable to the Parties. The dispute shall be considered to have arisen when Georgia Gulf sends the United States and MCEQ a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed forty-five (45) days from the date the dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States, shall be considered binding unless, within thirty (30) days after the conclusion of the informal negotiation period,

Georgia Gulf invokes formal dispute resolution procedures as set forth below. For the purposes of calculating time under this Section X (Dispute Resolution), Rules 6(a) and 6(e) of the Federal Rules of Civil Procedure shall control, except to the extent that the Local Court rules provide otherwise.

a. At any time during the period for informal negotiations specified in Paragraph 67, either Georgia Gulf, MCEQ, or the United States may propose the use of a third-party assisted, non-binding alternative dispute resolution (“ADR”) process to assist informal negotiation efforts. A proposal to use ADR shall be considered made when the requesting party sends the other party a written request for ADR. Within five (5) working days of receipt of a request for ADR, the recipients shall respond with a determination regarding its willingness to use ADR. Georgia Gulf, MCEQ, and the United States must all agree in writing to the use of any ADR process. Upon the written agreement of Georgia Gulf, MCEQ, and the United States to use ADR, the period for informal dispute resolution established through operation of Paragraph 67 may be extended for the purpose of allowing appropriate time for conduct of the agreed upon ADR process. Georgia Gulf, MCEQ or the United States may terminate the use of the ADR process at any time. The decision of the United States and/or MCEQ regarding participation in

or termination of ADR shall not constitute an action subject to judicial review or dispute resolution under this Consent Decree.

b. The United States and Georgia Gulf shall share equitably the costs of ADR. However, the ability of the United States and/or MCEQ to share the cost of ADR will be limited to the extent of funds designated for this purpose. If the United States and/or MCEQ determine that no funding is available for ADR, Georgia Gulf, MCEQ, and the United States may agree that Georgia Gulf shall bear all costs of ADR. Alternatively, the Parties may agree to use the services of an ADR professional available to the parties at no cost.

c. In the event of an agreement to use ADR pursuant to this Section, Georgia Gulf and the United States, after consultation with MCEQ, shall submit to each other a list of three suggested ADR professionals for consideration. A description of the qualifications of the proposed ADR professionals shall accompany the submittal. Georgia Gulf and the United States shall, within five (5) days after receipt of the list of ADR professionals, notify each other of those names to which they will not agree. If necessary, additional names shall be submitted and considered, until an ADR professional is agreed upon.

d. If for any reason Georgia Gulf and the United States are unable to agree upon or enter into a contract for the services of an ADR professional within the time periods specified in the agreement of the Parties to use ADR, then the Parties may continue unassisted informal negotiations to the extent time permits pursuant to the provisions of Paragraph 67.

e. All dispute resolution communications during the agreed upon ADR process shall be treated as confidential pursuant to Section 574 of the Administrative Dispute Resolution Act (5 U.S.C. § 574) and any other applicable laws and regulations. The Parties agree that an ADR professional used pursuant to this Section is not a necessary party and shall not be subpoenaed or called as a witness or expert in any arbitral or judicial proceeding relating to the ADR process or to the subject matter of the underlying dispute.

68. Formal Dispute Resolution. Georgia Gulf shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the United States and MCEQ a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but may not necessarily be limited to, any factual data, analysis, or opinion supporting Georgia Gulf's position and any supporting documentation relied upon by Georgia Gulf.

69. The United States, after consultation with MCEQ, shall serve its Statement of Position within forty-five (45) days of receipt of Georgia Gulf's Statement of Position. The United States' Statement of Position shall include, but may not necessarily be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States. The United States' Statement of Position shall be binding on Georgia Gulf, unless Georgia Gulf files a motion for judicial review of the dispute in accordance with the following Paragraph.

70. Georgia Gulf may seek judicial review of the dispute by filing with the Court and serving on the United States and MCEQ, in accordance with Section XIV of this Consent Decree (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within twenty (20) days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph or the conclusion of the ADR process pursuant to Paragraph 69 or such other time as may be agreed by the Parties in writing. The motion shall contain a written statement of Georgia Gulf's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

71. The United States, after consultation with MCEQ, shall respond to Georgia Gulf's motion within the time period allowed by the Local Rules of this Court. Georgia Gulf may file a reply memorandum, to the extent permitted by the Local Rules.

72. In any dispute brought under Paragraph 70, Georgia Gulf shall bear the burden of demonstrating that its position complies with this Consent Decree and furthers the objectives of the Consent Decree, and that Georgia Gulf is entitled to relief under applicable principles of law. The United States reserves the right to argue that its position is reviewable only on the administrative record and must be upheld unless arbitrary and capricious or otherwise not in accordance with law and Georgia Gulf reserves the right to argue to the contrary.

73. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any other obligation of Georgia Gulf under this Consent Decree, unless and until final resolution of the dispute so provides or unless otherwise ordered by the Court. Stipulated Penalties with respect to the disputed matter shall continue to accrue from the first day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 57 above. If Georgia Gulf does

not prevail on the disputed issue, Stipulated Penalties shall be assessed and paid as provided in Section VIII (Stipulated Penalties).

XI. INFORMATION COLLECTION AND RETENTION

74. The United States, MCEQ, and their representatives, including attorneys, contractors, and consultants, shall have the right of entry into the Aberdeen Facility, at all reasonable times, upon presentation of credentials, to:

- a. monitor the progress of activities required under this Consent Decree;
- b. verify any data or information submitted to the United States or MCEQ in accordance with the terms of this Consent Decree;
- c. obtain samples and, upon request, splits of any samples taken by Georgia Gulf or its representatives, contractors, or consultants as provided in Paragraph 75;
- d. obtain documentary evidence, including photographs and similar data; and
- e. assess Georgia Gulf's compliance with this Consent Decree.

75. Upon request, Georgia Gulf shall provide EPA and MCEQ or their authorized representatives splits of any samples taken by Georgia Gulf.

Upon request, EPA and MCEQ shall provide Georgia Gulf splits of any samples taken by EPA or MCEQ or their representatives, contractors, or consultants.

76. Until five years after the termination of this Consent Decree, Georgia Gulf shall retain, and shall instruct its contractors and agents to preserve, all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) in its or its contractors' or agents' possession or control, or that come into its or its contractors' or agents' possession or control, and that relates in any manner to Georgia Gulf's performance of its obligations under this Consent Decree. This information-retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, the United States or MCEQ may request copies of any documents, records, or other information required to be maintained under this Paragraph.

77. At the conclusion of the information-retention period provided in the preceding Paragraph, Georgia Gulf shall notify the United States and MCEQ at least ninety (90) days prior to the destruction of any documents, records, or other information subject to the requirements of the preceding Paragraph and, upon request by the United States or MCEQ, Georgia Gulf shall deliver any such

documents, records, or other information to EPA or MCEQ. Georgia Gulf may assert that certain documents, records, or other information is privileged under the attorney-client privilege or any other privilege recognized by federal law. If Georgia Gulf asserts such a privilege, it shall provide the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of each author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Georgia Gulf. However, no documents, records, or other information created or generated pursuant to the requirements of this Consent Decree shall be withheld on grounds of privilege.

78. Georgia Gulf may also assert that information required to be provided under this Section is protected as Confidential Business Information (“CBI”) under 40 C.F.R. Part 2. As to any information that Georgia Gulf seeks to protect as CBI, Georgia Gulf shall follow the procedures set forth in 40 C.F.R. Part 2.

79. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States or MCEQ pursuant to applicable federal or state laws, regulations, or permits, nor

does it limit or affect any duty or obligation of Georgia Gulf to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

XII. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

80. This Consent Decree resolves the civil claims of the United States and MCEQ for the violations alleged in the Complaint filed in this action through the date of lodging. The United States and MCEQ also covenant not to sue or take administrative action under Section 3008(a) and (h) of RCRA, 42 U.S.C. § 6928(a) and (h), for performance of the requirements set forth in Paragraph 22 (Installation and Operation of Air Stripper #1 Prior to Construction of Above-Ground PVC Solids Removal Unit) through and including Paragraph 30 (Removal of PVC Solids from Ponds 1 and 3) of this Consent Decree. This covenant not to sue is expressly conditioned upon satisfactory performance of the requirements set forth therein. The United States and MCEQ reserve all legal and equitable remedies available to enforce the provisions of this Consent Decree, except as expressly stated in Paragraph 80. This Consent Decree shall not be construed to limit the rights of the United States or MCEQ to obtain penalties or injunctive relief under CAA, RCRA, EPCRA, CERCLA, or CWA or their implementing regulations, or cost recovery claims under CERCLA, or under other

federal or state laws, regulations, or permit conditions, except as expressly specified in Paragraph 80. The United States and MCEQ further reserve all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, the Aberdeen Facility, whether related to the violations addressed in this Consent Decree or otherwise. The United States and MCEQ further reserve the right to seek corrective action/injunctive relief under Section 3008(h) of RCRA, 42 U.S.C. § 6928(h), except as specifically provided in Paragraph 80.

81. This Consent Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. Georgia Gulf is responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits; and Georgia Gulf's compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, nor shall approval of any submission made by Georgia Gulf under this Consent Decree constitute a warranty that implementation by Georgia Gulf of the approved submission will result in compliance with the provisions of the CAA, RCRA, EPCRA, CERCLA, or CWA, or with any other provisions of federal, State, or local laws, regulations, or permits. The United States and MCEQ do not, by their consent to the entry of

this Consent Decree, warrant or aver in any manner that Georgia Gulf's compliance with any aspect of this Consent Decree will result in compliance with provisions of the CAA, RCRA, EPCRA, CERCLA, or CWA, or with any other provisions of federal, State, or local laws, regulations, or permits.

82. This Consent Decree does not limit or affect the rights of Georgia Gulf or of the United States or MCEQ against any third parties, not party to this Consent Decree, nor does it limit the rights of third parties, not party to this Consent Decree, against Defendant, except as otherwise provided by law.

83. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Decree.

XIII. COSTS

84. The Parties shall bear their own costs of this action, including attorneys' fees, except that the United States and MCEQ shall be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to collect any portion of the civil penalty or any Stipulated Penalties due but not paid by Georgia Gulf.

XIV. NOTICES

85. Unless otherwise specified herein, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and addressed as follows:

To the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Box 7611, Ben Franklin Station
Washington, D.C. 20044-7611
Re: DOJ No. 90-5-2-1-08489
(202) 514-0097 (fax)

if by regular mail or post office express mail, and to

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
601 D Street, N.W., 2nd floor
Washington, D.C. 20004
Re: DOJ No. 90-5-2-1-08489
(202) 514-0097 (fax)

if by private overnight mail service.

and

To EPA:

David Abbott
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.

Atlanta, GA 30303-8960
(404) 562-9631
(404) 562-9663 (fax)
abbott.david@epa.gov

Gale Bonanno
Office of Civil Enforcement
Mail Code 2248A
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460
(202) 564-2243
(202) 501-0363 (fax)
bonanno.gale@epa.gov

To State of Mississippi:

Don Watts
Chief of the Environmental Compliance and Enforcement Division
Mississippi Department of Environmental Quality
P.O. Box 10385
2380 Highway 80 West (39204)
Jackson, MS 39289
(601) 961-5155
(601) 961-5674 (fax)
don_watts@deq.state.ms.us

Lisa T. Ouzts
Legal Division
Mississippi Department of Environmental Quality
P.O. Box 20385
2380 Highway 80 West (39204)
Jackson, MS 39289-1305
(601) 961-5340
(601) 961-5349 (fax)
lisa_ouzs@deq.state.ms.us

To the Coast Guard:

Mahalia Rahman
USCG, National Pollution Funds Center
4200 Wilson Blvd., Suite 1000
Arlington, VA 22203-1804
(202) 493-6898 (fax)

To Defendant:

Joel I. Beerman, Esq.
Vice President, General Counsel and Secretary
Georgia Gulf Corporation
115 Perimeter Center Terrace, Suite 460
Atlanta, GA 30346
(770) 395-4523
(770) 390-9673 (fax)
beermanj@ggc.com

With a copy to

John H. Grady, Esq.
Jones Day
1420 Peachtree Street, N.E., Suite 800
Atlanta, GA 30309
(404) 581-8316
(404) 581-8330 (fax)
jhgrady@jonesday.com

86. Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above.

87. Notices submitted pursuant to this Section shall be deemed submitted upon mailing, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

XV. EFFECTIVE DATE

88. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court.

XVI. RETENTION OF JURISDICTION

89. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Decree or entering orders modifying this Decree, pursuant to Sections X (Dispute Resolution) and XVII (Modification), or effectuating or enforcing compliance with the terms of this Decree.

XVII. MODIFICATION

90. The terms of this Consent Decree may be modified only by a subsequent written agreement signed by all the Parties or by order of the Court. Where the modification constitutes a material change to any term of this Decree, it shall be effective only upon approval by the Court. The terms contained in Appendix B of this Decree may be modified upon written agreement of the Parties without Court approval, unless any such modification effects a material change to

the terms of this Consent Decree or materially affects Georgia Gulf's ability to meet the requirements or objectives of this Decree.

XVIII. TERMINATION

91. After Georgia Gulf has maintained continuous satisfactory compliance with this Consent Decree for a period of five years after the Effective Date of this Consent Decree, has complied with all other requirements of this Consent Decree, including those relating to Section V (Compliance Requirements), has completed installation of the Above-Ground PVC Solids Removal System and Air Stripper #1 or #2 and has operated the Above-Ground PVC Solids Removal System and Air Stripper #1 or #2 for at least six (6) months pursuant to Paragraphs 22-24 of this Consent Decree without having any Hazardous Waste enter Pond 3, and has paid the civil penalty and any accrued Stipulated Penalties as required by this Consent Decree, Georgia Gulf may serve upon the United States and MCEQ a Request for Termination, stating that Georgia Gulf has satisfied those requirements, together with all necessary supporting documentation.

92. Following receipt by the United States and MCEQ of Georgia Gulf's Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether Georgia

Gulf has satisfactorily complied with the requirements for termination of this Consent Decree. If the United States, after consultation with MCEQ, agrees that the Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Decree.

93. If the United States, after consultation with the MCEQ, does not agree that the Decree may be terminated, Georgia Gulf may invoke dispute resolution under Section X of this Decree (Dispute Resolution). However, Georgia Gulf shall not seek dispute resolution of any dispute regarding termination, under Paragraph 70 of Section X (Dispute Resolution), until sixty (60) days after service of its Request for Termination.

XIX. PUBLIC PARTICIPATION

94. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. Georgia Gulf consents to entry of this Consent Decree without further notice.

XX. SIGNATORIES/SERVICE

95. Each undersigned representative of Georgia Gulf, the Assistant Attorney General for the Environment and Natural Resources Division, of the Department of Justice, or his designate, and the Executive Director of the Mississippi Department of Environmental Quality certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

96. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis.

97. Georgia Gulf agrees not to oppose entry of this Consent Decree by the Court or to challenge any provision of the Decree, unless the United States has notified Georgia Gulf in writing that it no longer supports entry of the Decree.

98. Georgia Gulf agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

XXI. INTEGRATION

99. This Consent Decree and its Appendices constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and supersede all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. Other than the Appendices, which are attached to and incorporated in this Decree, and deliverables that are subsequently submitted and approved pursuant to this Decree, no other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Decree or the settlement it represents, nor shall it be used in construing the terms of this Decree.

XXII. FINAL JUDGMENT

100. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States, MCEQ, and Georgia Gulf. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

XXIII. APPENDICES

101. The following appendices are attached to and incorporated into this Consent Decree:

“Appendix A” is a map of the Aberdeen Facility.

“Appendix B” is the Summary of Waste Determination Procedures.

Dated and entered this __ day of _____, ____.

UNITED STATES DISTRICT JUDGE
NORTHERN DISTRICT OF GEORGIA

FOR PLAINTIFF UNITED STATES OF AMERICA:

David E. Nahmias
United States Attorney
for the Northern District of Georgia

By:

Date 12/17/2007

Daniel A. Caldwell
Assistant United States Attorney
Northern District of Georgia
Georgia Bar No. 102510
600 Richard B. Russell Federal Bldg.
75 Spring Street, S.W.
Atlanta, Georgia 30303
(404) 581-6224
(404) 581-6181 (fax)

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:

Date DEC - 3 2007

J. I. Palmer, Jr.
Regional Administrator
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303-8960

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:

Date 12-7-07

~~Gracia Y. Nakayama~~
Assistant Administrator
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Date 11-28-07

~~Susan E. O'Keefe~~
Acting Director, Special Litigation and Projects Division
Office of Civil Enforcement
Mail Code 2248A
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

FOR THE MISSISSIPPI COMMISSION ON ENVIRONMENTAL QUALITY:

Trudy D. Fisher

Executive Director of the Mississippi Department of Environmental Quality
on behalf of the Mississippi Commission on Environmental Quality

P.O. Box 20305

Jackson, MS. 39289-1305

FOR DEFENDANT GEORGIA GULF CHEMICALS AND VINYL, LLC:

Joel A. Beerman
Vice President, General Counsel and Secretary
Georgia Gulf Corporation
115 Perimeter Center Terrace, Suite 460
Atlanta, GA 30346

Appendix A

Site Map

January 20, 1997

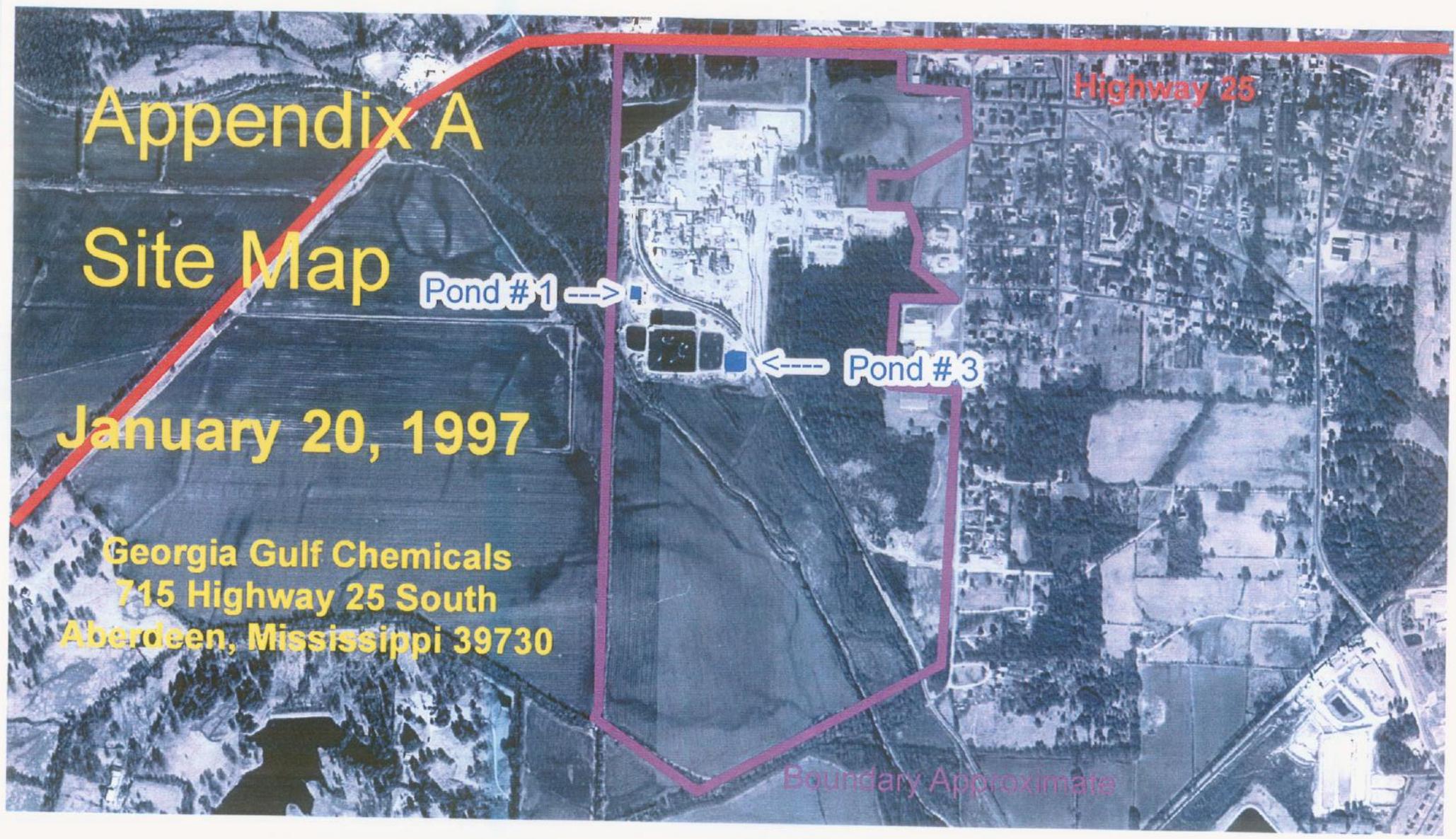
Georgia Gulf Chemicals
715 Highway 25 South
Aberdeen, Mississippi 39730

Highway 25

Pond #1 →

← Pond #3

Boundary Approximate



Appendix B

1. Summary of Waste Determination Procedures. The purpose of the Hazardous Waste Determinations and Management SOP ("SOP") is to establish a uniform, reliable means of determining the constituents of waste streams, ensuring their proper classification under hazardous waste regulations, and providing for proper management of all waste determined to qualify as hazardous.

2. The procedures of the SOP apply to all solid, liquid, and semi-solid wastes that are subject to regulation under the approved Mississippi hazardous waste regulations enforced in lieu of the Federal RCRA program.

3. The SOP delineates precisely the persons and units within the Facility responsible for implementation.

4. The SOP contains definitions of terms used in the waste analysis and management.

5. The SOP specifies a detailed procedure for waste analysis, including:

- a. Characteristics and constituents for which each waste must be evaluated.
- b. Methods to be used for such evaluation.
- c. Criteria as to when and under what circumstances a waste evaluation is required; if the waste is not part of an existing characterized waste stream; if there is doubt as to the composition of the stream; whenever a process change may affect the composition of a waste stream; and abnormal operating conditions such as pit overflow. Also, all characterized waste streams must be reviewed annually for changes.

d. The sequence to be followed by Facility personnel when making waste

determinations.

e. Records to be retained, including records of waste analysis (3 years), and the laboratory results or other basis for the waste determination.

6. The SOP contains detailed requirements for hazardous waste management, including:

- a. Container selection.
- b. Container issuance.
- c. Container identification.
- d. Container labels.
- e. Container filling.
- f. Container movement.
- g. Hazardous waste storage areas.
- h. Proper methods for disposal of full containers.